STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Independent Telephone Association	**]**	
	]	
Petition for initiation of an investigation of	**]**	
the necessity of and the establishment of a	**]**	
Universal Service Support Fund in accordance	**]**	**00-0233**
with §13-301(d) of the Public Utilities Act	**]**	
	]	**(Consolidated)**
Illinois Commerce Commission On Its Own Motion	**]**	
	]	**00-0335**
Investigation into the necessity of and, if	**]**	
appropriate, the establishment of a Universal	**]**	
Support Fund pursuant to Section13-301(d)	**]**	
of the Public Utilities Act.	**]**	

BRIEF OF INTERVENORS

LEAF RIVER TELEPHONE COMPANY
ALHAMBRA-GRANTFORK TELEPHONE COMPANY
THE CROSSVILLE TELEPHONE COMPANY
GLASFORD TELEPHONE COMPANY
MONTROSE MUTUAL TELEPHONE COMPANY
NEW WINDSOR TELEPHONE COMPANY
ONEIDA TELEPHONE EXCHANGE
VIOLA HOME TELEPHONE COMPANY
WOODHULL COMMUNITY TELEPHONE COMPANY

ORAL ARGUMENT REQUESTED

Pursuant to 83 IAC 200.850(A)(3)

SUMMARY OF POSITION

"Economic costs" or "costs" in 13-301(d) means historic costs. Forward looking cost models cannot be used because the FCC has preempted this matter under its rules. A carrier may qualify for universal service by using its ROR approach or an FCC embedded cost study. The affordable price must be the current price because any increase on this record would burden federal USF to low income consumers and be contrary to 47 USC §254(f).

It was a violation of LRTC's constitutional rights to deny it the opportunity to present cost study evidence in L.R. Ex. 3. Joint Movants waived their objections to L.R. Ex 3 by not objecting to portions of LRTC's cost study and portions of Gridley's cost study admitted into evidence. The hearing examiner abused his discretion in striking parts of L.R. Ex. 3 when extensions of time were granted to other parties.

HAI has been misapplied by Staff and AT&T. They propose using HAI for purposes it was not intended for. Staff's final proposal delays the impact of HAI for one year but is subjective and standardless and AT&T's proposal is contrary to federal law and is preempted. With appropriate inputs, LRTC passes the HAI test. FCC rules and the policy of §254(f) require support for all rural lines and DSL should be a supported service. The IXCs contributing to the DEM fund should be required to lower their rates when consumers begin paying line item contributions to IUSF.

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I. "ECONOMIC COSTS" IN 13-301(d) OF THE PUBLIC UTILITIES ACT MEANS HISTORICAL COSTS

A. Legislative intent

An analysis of the evidence must begin with a clear understanding of the legislative directions to the Commission. 220 ILCS 5/13-301(d) states in part:

> Consistent with the findings and policy established in paragraph (a) of Section 13-102 and paragraph (a) of Section 13-103, and in order to ensure the attainment of such policies, the Commission shall:
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> * * *
>
> (d) investigate the necessity of and, if appropriate, establish a universal service support fund from which local exchange telecommunications carriers who . . . received funding and whose <u>economic costs</u> of <u>providing</u> services for which universal service support may be made available exceed the affordable rate established by the Commission for such services may be eligible to receive support, less any federal universal service support received <u>for the same</u> or similar <u>costs</u> of providing the supported services;
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> * * *
>
> In establishing any such universal service support fund, the Commission shall, in addition to the determination of <u>costs</u> for supported services, consider and make findings pursuant to paragraphs (1), (2) and (4) of item (e) of this Section. Proxy cost as determined by the Commission, may be used for this purpose. (Emphasis added.)

The Commission is a creature of the legislature deriving its power and authority solely from the statute and its acts or orders which are beyond the purview of the statute are void. *E.g*, Illinois *Power Co. v. ILCC*, 111 Ill.^{2d} 505, 490 N.E.^{2d} 1255 (1986). The term "economic costs" is not defined in the Public Utilities Act ("Act")[1] and the term "costs" is used in a later sentence in the same context. "Economic costs" and "costs" are used interchangeably. No Illinois court case has defined "economic costs" under the Act but it undoubtedly, along with "costs," means historical costs. The Staff and some parties labor under the misguided interpretation that the term "economic costs" or "costs" in 13-301(d) <u>compels</u> the use of future-looking costs such as the HAI 5.0a model (hereafter "HAI"). (Staff Ex.1 @4; T.798-802 [Hoagg]; T.705 [Koch]; IITA Ex. 2 @12-13, 16 [Schoonmaker]; Ameritech Ex. 2 @4-5 [O'Brien]).[2] Although well meaning, these parties have misconstrued the statute and have read into it terms and conditions that are plainly not there. This interpretation is contrary to the fundamental principles of statutory construction.

The primary rule of statutory construction is to follow the legislative intent. *E.g.*, *Denton v. Civil Service Commission*, 176 Ill.2d 144, 148, 697 N.E.2d 1234 (1997). There is nothing in the context of the use of "costs" or "economic costs" in 13-301(d) to indicate a legislative intent to require the Commission to use some future-looking cost model. Instead, the legislature intended for the Commission to use only historical costs.

13-301(a) specifically embraces the legislative <u>findings</u> in 13-102 (a) and expression of <u>policy</u> in 13-103(a). 13-102(a) makes the following <u>findings:</u>

> With respect to telecommunications services, as herein defined, the General Assembly <u>finds</u> that:

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1 220 ILCS 5/1-101 *et seq.*

2 Ameritech later recommended abandoning HAI and using rate of return methods (Ameritech Ex. 2.1 @ 2-3)

> (a) Universally available and widely affordable telecommunications services are essential to the health, welfare and prosperity of all Illinois citizens.

13-103(a) sets forth the State policy as follows:

> Consistent with the findings, the General Assembly declares that it is the policy of the State of Illinois that:
>
> (a) Telecommunications services should be available to all Illinois Citizens at just, reasonable, and affordable rates and that such services should be provided as widely and economically as possible in sufficient variety, quality, quantity and reliability to satisfy the public interest. (Emphasis added.)

In interpreting 13-301(d), the Commission should keep in mind the legislative policy and consider the reason and necessity for the law, the evil to be remedied, and the object to be obtained by the statute. *Collins v. Board of Trustees*, 155 Ill.2d 103, 610 N.E.2d 1250 (1993). The main purpose of universal service is to provide support to rural telecommunications carriers so that they can provide service to rural customers that would otherwise be cost prohibitive. Providing services economically under 13-103(a) does not indicate forward looking. Nothing in the policy of the legislature in 13-103(a) suggests that "economic costs" or "costs" means hypothetical future or "forward-looking" costs.

The legislature has used the term "economic costs" in an undefined manner on 2 other occasions, *i.e.*, 410 ILCS 325/2 ([i]ncidents of sexually transmittable diseases is rising at an alarming rate and that these diseases result in significant social, health and economic costs . . .); 415 ILCS 5/22.32 (the hospital shall consider the quantity of waste, the hazardous properties of the waste, the safety of its patients and employees, economic costs and savings . . .). Neither instance indicates forward-looking costs.

Forward-looking cost models like HAI 5.0a incorporate the principles of long-run service incremental costs or LRSIC (T.194-195 Clarke) IITA Ex. 1, Attach 2, model description manual, Intro 1.1 states, “The HAI Model Release 5.0a has been developed by HAI Consulting, Inc. . . . for the purpose of estimating the forward-looking economic costs of: (a) basic local telephone service . . . . All three sets of costs are calculated based on Total Service Long Run Incremental Costs (“TSLRIC”) principles. . . .”

If the legislature meant for the term, "costs" or “economic costs” to mean forward-looking long run service incremental costs, as some parties suggest, the legislature certainly knew how to clearly express that meaning because the legislature has unequivocally stated that in 4 other sections of the Act. (See 220 ILCS 5/13-502 (c) (“long-run service incremental costs”); 5/13-505.1 (a) (“long-run service incremental costs”); 5/13-505.7 (“long-run service incremental costs”); and 5/13-507 (“long-run service. The only reasonable interpretation, then, of "costs" and “economic costs” is historical costs or 13-301(d) would have specifically stated, “long-run service incremental costs” as the legislature has on other occasions in the Act.

A statute has to be construed as a whole. *E.g., Harris v. Manor Health Care Corp.*, 111 Ill.2d 350, 489 N.E.2d 1374 (1986). “Economic costs” is also used in 13-301(e)(3), which states: “Identify the incumbent local exchange carrier’s economic costs of providing the supported telecommunications services.” (Emphasis added.) The present tense "providing" in both 13-301(d) and (e) is indicative of historical costs; otherwise, to express a future intent the legislature would have stated, "economic costs to provide the supported telecommunications services."

A portion of 13-301 that is not applicable here, subpart (e), states:

> No funds shall be created pursuant to this item until existing implicit subsidies, including, but not limited to, those subsidies contained in interexchange access charges, have been identified and eliminated through revisions to rates or charges. (Emphasis added.)

Although subpart (e) is not the pending subject matter before the Commission, the word "existing", when viewed, in conjunction with the interchangeable use of the term "costs," the ability to clearly express, but the absence of, the term "long-run incremental costs", indicates a firm and consistent intent of the legislature to measure the telecommunications carrier's existing, *i.e.*, historical costs, not future long-run costs. In addition, all rural carriers (except cooperatives) are subject to ROR regulation under the Act (220 ILCS 5/13-504) and ROR is based on historical costs. It is only logical, then, that the legislature intended to provide universal service support to rural telephone companies in a way consistent with other portions of the Act applicable to rural telephone companies, *i.e.* historical costs.

When a statutory term like "economic costs" or "costs" is undefined, that term must be given its ordinary and properly understood meaning. *E.g.*, Union *Electric Co. v. Dept. of Revenue*, 136 Ill.2d 385, 397, 556, N.E.2d 236 (1990). *Armour Pharmaceutical Co. v. Dept. of Revenue*, 321 Ill.App.3d 662, 748 N.E.2d 265 (2001). While the term "economic costs" is not defined in the dictionary, the use given to the term by several witnesses in this proceeding illustrates that "economic costs" does not mean forward-looking costs because they often use "forward-looking" to modify "economic costs." In other words, if "economic costs" meant forward-looking costs, common usage would not require a redundant explanation. Yet, several witnesses when referring to "economic costs" interject "forward-looking" before or after the term "economic costs." For example, Hoagg, Staff Ex. 1 @4, L.82, @6, L.123, @7, L.140, @628, L.18, @690, L.20, @705, L.1, @718, L.21-22, @799, L.4; Clarke, AT&T Ex. 4, L.7 @6, L.16 @7, L.10 @7, L.15, AT&T Ex. 6 @2, L. 15-16, @10, L.10; O'Brien, Ameritech Ex. 2 @4, L.23; Sands, MCI Ex. 1 @5 and @12.

<u>Webster's</u> defines "economic" as, "relating to or concerned with economics; financially sound, reasonably profitable; useful in the production of wealth or promotion of commercial prosperity. . . ." "Cost" is defined as, "The price paid or to be paid for something." Nothing in these definitions indicates a future or forward-looking cost model. The ordinary meaning, then of "economic costs" or "costs" is clearly historic costs rather than forward-looking costs.

A recent decision, *Commonwealth Edison v. Ill.Comm.Comm.*, 2-00-0375, June 6, 2001 lends support to the historic or embedded cost approach. Under the single billing option of 5/16-118(b), Commonwealth Edison filed a tariff proposing a credit of 20¢ per month for each customer through the use of an "avoided cost" methodology, which was arrived at using an <u>average</u> cost per customer. This Commission rejected that approach and instead adopted an "embedded cost" methodology. The "embedded cost" methodology gave the customer a 55¢ credit.

Commonwealth Edison argued on appeal that the "embedded cost" methodology violated 5/16-108(c) of the Act, which required that the single billing option to be "cost based." The Act does not define, "cost based." The court reasoned that it's meaning was not plain on its face so the court upheld the Commission's interpretation. In the present case, the Commission should also interpret "economic cost" or "costs," as "embedded costs" just as it did in interpreting "cost based" in *Commonwealth*. Any other interpretation of "cost" or "economic cost" would be incompatible with the *Commonwealth* decision.

It is not reasonable to interpret "costs" or "economic costs" as forward-looking costs, but a statute capable of two interpretations should be given that which is reasonable and which will not produce absurd, unjust, unreasonable or inconvenient results that the legislature could not have intended. *Collins v. Board of Trustees Firemen's Annuity*, 155 Ill.2d 103, 610 N.E.2d 1250 (1993). The FCC has determined that it is <u>impossible</u> for forward-looking cost models to determine <u>rural</u> carriers' costs at this time (See Argument IB), so surely the legislature did not intend an impossible meaning to "costs" or "economic costs." Interpreting "economic costs" as forward-looking costs would lead to absurd results. Forward-looking cost models such as the HAI grossly misstate carriers' costs under 13-301(d) and are, therefore, contrary to the explicit legislative policy in 13-

103(a).[3] An interpretation of "costs" or "economic costs" as forward-looking costs would unduly restrict the Commission in fashioning a universal service fund in Illinois because it would preclude the use of real world considerations. (Staff Ex. 2 @19);[4] (IITA Ex. 2 @31) (See Argument IV).

13-301(d) allows the use of proxy cost. A proxy is an agent or substitute. The rate of return (hereafter "ROR") is a reasonable proxy of costs in lieu of individual carrier cost studies. While ROR may not identify costs like a cost study, it comes very close. Ameritech recommends ROR for support (Ameritech Ex. 2.1 @2-3) and so does IITA (IITA Ex. 2.0 @47-50). Staff originally relied upon ROR for support purposes with the exception of the use of HAI for carriers whose HAI results were less than ROR (Staff Exs. 1 & 2). On the last day of the hearings, Staff modified it's recommendation to propose that all carriers should receive 100% of their first year ROR revenue requirement, and at the end of that year, if HAI results were less than ROR, the carrier's support could be reduced by one-fifth each year over five years if all other circumstances remained the same (T.837-841, 857-858 Hoagg). AT&T clings to the HAI approach (AT&T Ex. 4) but curiously, AT&T does not recommend using HAI for its intended purpose, *i.e.*, establishing carriers' future costs and the amount of support needed (See

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3 The biggest criticism the Staff has against funding universal service on the basis of the HAI results is that HAI in most cases exceeds ROR results. IITA calculated an HAI fund at $73 million with its input changes. With just defaults the fund would be nearly $30 million, IITA Ex. 3. HAI was the forward looking cost model that gave the lowest costs of the models that are available. (IITA Ex. 2@16-17).

4 "Whether the actual costs of the companies are higher than economic costs is not pertinent to the appropriate calculation of forward-looking costs," stated Mr. Koch.

Argument IV below).

The only reasonable construction, then, of 13-301(d) is that “costs” or “economic costs” means historic costs. Historic costs can be based on either ROR results or a carrier’s FCC cost study results (See Argument III below). Any other construction of 13-301(d) is patently unreasonable and contrary to the manifest intent of the legislature. 13-301(d) does not authorize the Commission to use HAI for universal service (See**,** *GTE MTO v. Ill.Comm.Comm.*, 166 Ill.App.3d 916, 521 N.E.2d 584 (1988) but even if it did, the FCC has preempted the use of forward-looking cost models for universal service for the time being.

B. Preemption

On May 23, 2001, the Federal Communications Commission (“FCC”) entered an order in C.C. No. 96-45, 21st order on rehearing in docket No. 00-256 (hereinafter “FCC Decision”) and found that forward-looking cost models simply are not reliable or useful for rural telephone companies. The FCC rejected the use of forward-looking cost models at the present time and proclaimed that historical or embedded costs will be used over the next five years for federal universal support purposes for rural carriers. The FCC stated at paragraph 177 as follows:

> Although we conclude that the Rural Task Force’s analysis has not demonstrated that a forward-looking mechanism could never appropriately be used to estimate rural costs, we do not have sufficient information to do so at this time. Even those commentators who urge the Commission to move to forward-looking cost for rural carriers recognize that the Commission would need additional time to develop suitable rural input values. Because the Commission has not

> developed rural inputs and it is not possible to determine forward-looking costs for rural carriers at this time, we find that rural carriers should continue to receive support based upon their embedded costs while the five-year plan adopted in this Order is in place. (Emphasis added.)

While the FCC has worked on the Synthesis forward-looking cost model, AT&T witness Clarke described the FCC's Synthesis model as closely comparable and incorporating the same data as HAI (AT&T Ex. 4 @5-6, 8, 10; Staff Ex. 2 @18) and IITA agrees (IITA Ex. 2 @22). The FCC very much aware of the HAI by Dr. Clarke's active participation in the federal universal service docket (AT&T Ex. 4 @3). Dr. Clarke stated that in collaboration with the FCC, the Synthesis model incorporated HAI's switching and interoffice module (Ex. 4 @5-7) and he also emphasized that the validity of HAI has generally been affirmed by the collection of expense factors that has been adopted by the FCC for the Synthesis model (AT&T Ex. 4 @10-11).

47 USC §254(f) restricts state authority on universal service as follows:

> A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. * * * A state may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms. (Emphasis added.)

In other words, Congress has preempted the field and Illinois cannot adopt a procedure for IUSF that is inconsistent with the FCC's rules, but Illinois may adopt rules that expand universal service but not restrict it. The preemption doctrine provides that federal law overrides state laws on the same subject. Absent explicit preemptive language, the courts may infer Congress's intent to preempt the field where a federal regulation is so pervasive that it is reasonable to infer that Congress left no room for the states to supplement it or where a federal statute touches on a subject that no federal system will be assumed to preclude the enforcement of state laws on the same subject. *Funeral Financial Systems v. Metropolitan Life Ins, 2001 WL 747595 (June 29 2001).* Even when Congress has not completely displaced state regulation of a specific subject or object, state law is nullified to the extent that it actually conflicts with federal law. Actual conflict arises when state law or state regulations interfere with the accomplishment and execution of the purposes and objectives of Congress. (*Funeral Financial*).

It would be inconsistent with §254(f) and the FCC's rules for the Illinois Commerce Commission to utilize a forward-looking cost model. The FCC's rules for universal service <u>require</u> using historical costs[5] so Illinois is preempted for using forward-looking cost mechanisms.[6]

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[5] 47 CFR 36.1(f) states that the classification to accounts shall be the Uniform System of Accounts for Telecommunications Companies prescribed by the FCC. The Uniform System of Accounts is found in Part 32 of the Commission's rules (47 CFR 32.1, *et seq.*) That rule states: "The revised Uniform System of Accounts (USOA) is a <u>historical</u> financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess those results within a specified accounting period." (Emphasis added.) In calculating universal service support, 47 CFR 36.601(b) states that the expense adjustment for universal service will be computed on the basis of data for the preceding calendar year, *i.e.*, historical data. See also, 47 CFR 36.611 "actual depreciation expense," "actual repair expense" and "actual amount for that expense." See also §61.39 and Part 69.

[6] Verizon, points to the FCC's refusal to permanently abandon forward-looking cost models (FCC Decision @ par. 174) but this misses the mark. The fact is, forward-looking cost models don't predict rural carriers' costs with any degree of reliability. Ameritech has admitted HAI is not a useful predictor

The FCC has indicated forward-looking models cannot possibly determine rural carriers' costs and are not sufficiently developed for use for rural carriers at this time. Just as forward-looking cost models are inadequate for federal universal service, so too are they inadequate for Illinois universal service. IITA's HAI results with its input

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of high cost fund needs (Ameritech Ex. 2.1 @2). The FCC has simply left the door open for future consideration of forward-looking models.

changes yield a $73 million fund (IITA Ex. 2 @46). The HAI default run generates a nearly a $30 million fund and the ROR results produce a $14,567,114 fund (IITA Ex. 3 @14). Staff witness Koch indicated that HAI results per company could <u>only</u> be classified as reasonable if HAI results were within 5% of ROR on a <u>consistent</u> basis (T.689-690). ROR, then, is the benchmark of reasonableness and should be used as the measure to qualify rural carriers for universal service support. HAI does not set forth a standard that is specific, predictable and sufficient under §254(f) and is therefore unlawful.

HAI has been proven to be unreliable and it was not developed for the purposes used by Staff. The Staff's only use of HAI is to employ it in a manner to deny 7 rural carriers, including LRTC, their ROR and universal service when HAI results are below ROR. While other carriers would receive their ROR at 11.21%, the 7 carriers would not because of HAI. This application is a denial of due process and equal protection and does not provide for sufficient money for LRTC to meet its real costs. *Sprague v. Biggs*, 390 Ill. 537, 62 N.E.2d 420 (1945). Staff's use of HAI is unlawful and inconsistent with the FCC's rule since Staff is using HAI to <u>defeat</u> universal service instead of preserving and advancing universal service as required under 47 USC §254(f). Not surprisingly, Staff admits that HAI has never been used this way before (T.855).

Under the FCC's Decision, the Illinois Commerce Commission is going to have to annually certify carriers under the embedded cost methodology for federal universal service support 47 CFR 54.314. It does not make good policy sense for the Illinois

Commerce Commission to administer different universal service tests--the historical cost approved by the FCC, and some different test in Illinois. Administering one historical test is much more administratively convenient and efficient. Furthermore, 13-301(d) requires the reduction of state universal service amounts by the amount of federal universal service support received.[7] An apples to apples application would suggest that Illinois use the same historic test as the FCC has adopted.

The HAI and other forward-looking cost models are inconsistent with the §254(f) and the FCC's rules because no existing model can possibly determine a rural carrier's future costs. The FCC uses historical costs to provide universal service support and a forward-looking cost model is inconsistent with the FCC rules and it is inconsistent to use HAI to deny universal service support as the staff proposed. Therefore, this Commission is preempted from using forward-looking costs by federal law and must use historical costs. *General Motors Corp. v. Ill.C.C.*, 143 Ill.2d 407, 574 N.E.2d 650 (1991).

Having determined the meaning of "costs" or "economic costs" as historical costs, the Commission must next determine the affordable price of supported services.

[7] Verizon points out that under the FCC's Decision, federal universal service support will increase in the future, thus reducing the size of the Illinois fund (Verizon Ex. 5 @2).

II. <u>THE AFFORDABLE PRICE IS THE CURRENT PRICE</u>

Section 13-301(d) requires the Commission to consider and make findings pursuant to item (e)(4), which states:

> Establish an affordable price for supported telecommunications services for the respective incumbent local exchange carrier. The <u>affordable price shall be no less than the rates in effect at the time the Commission creates a fund</u> pursuant to this item. The Commission may establish and utilize indices or models for updating the affordable price for supported telecommunication services. (Emphasis added.)

The term "affordable price" is not defined in the statute although the legislature has adopted a policy of an "affordable rate" in 13-103(a).[8]

The legislative policy and intent is to make telecommunications services available to <u>all</u> citizens at affordable rates (220 ILCS 13-103(a)). The Staff recommends raising basic rates to $24.00 for residential and $27.00 for business. (Staff Ex. 3 @14; Staff Ex. 9 @4; T.479). Verizon recommends an affordable price of $22.23 for both residential and business based on Verizon's own rates[9] (Verizon Ex. 4 @10) and MCI recommends an affordable rate of $22.36 for residential and $29.51 for single line business. (MCI Ex. 1 @9-10). None of these recommendations include the <u>Additional Charges</u> of 911 surcharges, federal subscriber line charges, ITAC charges or taxes (hereafter "Additional Charges") (T.465-6, Staranczak); (T.386-7, 392, Beauvais); (T.546-7, Sands). IITA

[8] 13-301(d) also makes reference to the "affordable rate" which appears interchangeable with the term "affordable price".

[9] Verizon's price includes internal cross subsidies (T.393) between its large exchanges (class A 384-385) and its rural class exchanges (class B, T.385). This figure, therefore, is unreliable.

recommends the current price as the affordable price (IITA Ex. 2 @43-44; Ex. 4 @34-39) but if it must be raised; it recommends an affordable price no greater than the $13 to $14 range. (IITA Ex. 4 @40).

IITA estimated that the Additional Charges would be, on average, $7.56 more than the basic charges (IITA Ex. 4 @40). When the Additional Charges are included with the Staff's $24 proposed price, the total customer charge would equal approximately $31.56.[10] Dr. Staranczak suggested that the Commission consider the Additional Charges in establishing the affordable price (T.477) but he was unclear about what he was recommending to the Commission for the affordable price. Dr. Staranczak testified that he would find an affordable rate between $25 and $35 acceptable, with $35 on the high end including all Additional Charges (T.467, 486). However, this conflicted with his filed testimony in which he recommended that the highest affordable price be $34, exclusive of all Additional Charges (Staff Ex. 9 @6) and he admitted to this inconsistency (T.500-501). In any event, Staff's recommendation is excessive and must be rejected by the Commission.

Staff's affordable price methodology is fallacious and its proposed affordable price is too burdensome on customers, especially considering Additional Charges. In order to reach his affordable price, Staranczak began with the Bureau of Labor statistic indicating that the average urban wage-earning household in the United States spends approximately

[10] LRTC's total charges with basic and Additional Charges equal $34.21. (LRTC Ex. 2 @ 5).

1.2% of its income on local telephone charges (Staff Ex. 3 @11). Yet Dr. Staranczak admits to arbitrarily doubling the 1.2% expenditure per household without any basis whatsoever (T.479-80). As Dr. Staranczak testified, "[I]t is far from clear at this stage what the appropriate price for these services should be" (Staff Ex. 9 @2).

Dr. Staranczak indicated that the purpose of an affordable price is to make it affordable for low-income subscribers (T.475). Even though the Staff's proposed $24 price is more than $10 above the national urban average,[11] Staranczak felt that $24 is what low-income people can afford (T.479, 486). By low-income households, Staranczak did not mean those eligible for Lifeline compensation but rather those just above Lifeline (T.487) yet this is precisely the wrong approach.

The public policy in 13-103(a) is for all citizens to receive services at affordable rates. Contrary to Staff's recommendation, the public policy does not exclude Lifeline households. Lifeline support is not sufficient for low-income households to maintain universal service, with the increases in the current rate that the Staff proposes. Rural Lifeline households receive only $7.50 per month[12] (Ameritech Ex. 2 @14-15; 83 Ill.Adm.Code 757; 47 CFR 54.403), and Staff seeks to raise current rates to $24

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11 The national urban average rate is $20.18, which includes all Additional Charges. (Harrisonville Ex. 4 @ 8-9). Staff's $24 rate plus $7.56 equals $31.56, more than $10 above the national urban average ate.

12 Most of this money is funded by the federal government.

(excluding Additional Charges). An increase of that magnitude will wipe out most, and in many cases, all of the amount of Lifeline support low-income households now receive.

For example, Alhambra's current rate is \$17.14, \$6.86 below the Staff's \$24 target. Less than \$1 of support would remain after the increase. Montrose's current rate is \$17.98, \$6.02 from the Staff's proposal and less than \$1.50 would remain after the increase. Any low income household whose carrier is at \$16.50 or below would have its entire Lifeline support eliminated by an increase to a \$24 affordable price. Crossville's current rate is \$16.36, Glasford's is \$4.03, New Windsor's is \$15.69, Oneida's is \$12.13, Viola's is \$12.62, and Woodhull's is \$14.21. (IITA Ex. 2, Attach. 5 REVISED). Increases for Lifeline customers of these companies will be more than offset by an increase in the proposed affordable price of \$24, leaving a net negative impact to those Lifeline households.

There is no evidence in the record on the number of households that will be affected by the erosion of Lifeline support by Staff's proposed increase in affordable price. Ameritech pointed out that low income households would be affected most by an increase in affordable price and invited Staff to comment on this issue (Ameritech Ex. 2 @14-15). Notwithstanding this, Staff failed to investigate and develop the record on the effect of a \$24 rate on low income consumers. *Citizens Utilities Co. v. IPCB*, 134 Ill.App.3d 111, 479 N.E.2d 1213 (1985). Staff should have been concerned about the legislative policy for all citizens and its impact on universal service. Staff's \$24 affordable price lacks a legally sufficient foundation. *Concerned Citizens For*

Responsible Energy Development v. Ill.Comm.Comm., 285 Ill.App.3d 82, 673 N.E.2d 1159 (1996).

A $24 affordable price would not preserve universal service and would clearly burden Federal universal support mechanisms contrary to 47 USC §254(f) by obliterating present Lifeline support for many low income customers in rural areas. Thus, the Commission is preempted from raising the current rate. At some other time, perhaps, the Commission could increase the amount of Lifeline support and raise the affordable price at the same time so that the increase would have a neutral impact on low income consumers.

Staff's proposed affordable price is far too high for another reason. LRTC is a case in study of the proposed affordable price in effect. LRTC's current basic rate (without Additional Charges) is $26.21 (L.R. Ex. 2 @5), slightly above the Staff's proposed affordable price, yet LRTC's penetration rate is only 88%, even lower than the Illinois average. (L.R. Ex. 2 @6). LRTC's price, with Additional Charges equals $34.24, within Dr. Staranczak's range. However, 15%-20% of LRTC's customers each month are unable to pay their bills on time and routinely receive disconnect notices (L.R. Ex. 2 @6). This condition has existed for years. Numerous customers have inquired about ways to eliminate the "surcharges" on their bills and they have indicated that it is hard for them to pay their telephone bills at the current rate (L.R. Ex. 2 @5).

Illinois' penetration rate is one of the lowest in the country. Nationally 94.1% of all households have telephone service. Illinois' penetration rate is 91.8%, 44th in the nation (Harrisonville Ex. 4 @15). Illinois' penetration rate has declined 2.6% from 1984 to 2000 (T.244). Dr. Staranczak knew that Illinois had a lower than average rate for local service but did not appear to be concerned (T.464-465). Data suggests that the rates of larger Illinois carriers such as Verizon may have already adversely affected the penetration rate in Illinois, thus threatening the "universality" of universal service (IITA Ex. 4 @37). It is erroneous to base the affordable price for rural companies on the present rates of large companies such as Verizon because these rates obviously contribute to Illinois' dismal ranking in the penetration rate (Harrisonville Ex. 4 @11, 15, 17, 20). In other words, establishing an affordable price at the price of larger LECs is not a solution, it is part of the problem.

Dr. Staranczak estimated that the national urban price is between $18 and $20 (T.470-471). According to FCC sources, the national urban average rate for local exchange service is $20.18, the national median rate is $19.57 for urban areas, and the national urban average residential rate is $19.87. These figures include all Additional Charges (Harrisonville Ex. 4 @8-9; IITA Ex. 4 @8). IITA Ex. 4, Attach. 8 lists the Additional Charges for all Illinois companies and demonstrates that most companies' current rates for local service are above the national average and median rates so the current rates are the most reasonable and affordable rates. On the other hand, taking the national average urban rate of $20.18 and subtracting $7.56 of Additional Charges, equals an affordable price of between $12 and $13 (IITA Ex. 4 @38-39).

Since the Commission is unable to establish an affordable price on this record, the

13-301(d) sets forth a default provision that the affordable price shall be no less than the current rate at the time the fund is established. The wisest policy at this time is to establish the affordable price at the current price.

III. STRIKING PORTIONS OF L.R. EX. 3 DEPRIVED LRTC OF DUE PROCESS AND EQUAL PROTECTION.

A. Background

On April 9, 2001, LRTC filed a petition to intervene in this docket. It was not ruled upon until June 19, 2001, the day the hearings began when it was granted (R.103). Prior to the initial hearing, Joint Movants (AT&T, Ameritech, MCIWorldcom and Verizon) filed a motion which they titled "Motion to Strike Improper Embedded Cost Testimony." The motion sought to strike L.R. Ex. 3.0, the rebuttal testimony of Michael Petrouske arguing that it was "not rebuttal" and should have been filed on March 23, 2001, under a schedule set on March 22, 2001 (R.83) before LRTC became a party to the proceedings and before LRTC petitioned to intervene to become a party. Joint Movants also argued that L.R. Ex. 3 violated their due process rights because they had no ability to respond to LRTC's cost study proposal.

On March 23, 2001, IITA filed testimony and suggested that individual company cost studies should be submitted by any carrier desiring to do so (IITA Ex. 2 @15). On May 11, 2001, the Staff of the Illinois Commerce Commission filed testimony (Staff Exs. 1.0 through 5.0), in which the Staff proposed, a method for establishing universal service support. This method proposed, for the first time, to use HAI as a vehicle to deny LRTC all universal service support[13] (See Staff Ex. 1).

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[13] Staff initially proposed to phase out all support to LRTC over five years, but Staff's exhibits reflected 4 years (L.R. Hoagg Cross Ex. 1; Staff Ex. 2). Staff clarified the timing of its proposal during the final day of hearings (T.837-841, 857-858).

Also on May 11, 2001, AT&T submitted testimony and suggested that a carrier should get support only when the <u>average</u> HAI costs exceed its affordable price less federal universal service support (AT&T Ex. 3 @12-14). 220 ILCS 5/13-301(d) directs the Commission to make findings on implicit subsidies, including access subsidies. AT&T also presented a radical view of the statute arguing that if the carrier's 2000 intrastate access revenues exceeded the HAI <u>average access costs</u>, an implicit subsidy existed, thus the carrier should be <u>denied all</u> Illinois universal service support. This "interpretation" is not found anywhere in the statute and is contrary to the purposes of universal service support, but the important point is that this testimony <u>first</u> appeared on May 11, 2001, and it had the drastic result of recommending that LRTC should receive <u>no</u> universal service support (AT&T Ex. 3 @14).

In response to the Staff's proposal and AT&T's proposal, LRTC filed LRTC Ex. 3 on June 12, 2001, and submitted a cost study as an <u>alternative</u> qualifying approach. That testimony not only challenged the Staff's HAI inputs but also and recommended that LRTC's annual cost study, due to be filed with the FCC on July 1, 2001, be used as the preferred method of determining support. This cost study measured the <u>actual</u> costs of LRTC pursuant to the accepted cost methodology in the FCC's rules for LRTC to obtain federal universal service.

Mr. Petrouske followed long-standing industry practices and prepared LRTC's cost study pursuant to the FCC's rules at Part 36 and Part 69 (See affidavit of Michael P. Petrouske attached to LRTC's Response to Joint Movants) (LRTC Ex. 3, 5-8). Using current FCC support methods is consistent with the FCC's rules and meets §254(f), which requires that state rules be consistent with FCC's rules and be specific, predictable and sufficient (Argument IB above). The cost study data presented by LRTC is, if anything, the most accurate indication of LRTC's costs than anything else in the record. LRTC's cost study followed the well-established federal procedure and there is nothing "new" that the Joint Movants are unfamiliar with or incapable of preparing for adequate cross-examination.

In L.R. Ex. 3, Mr. Petrouske explains that LRTC has a cost separation study performed annually to develop interstate access rates which need to be filed with the FCC on July 1st. The cost study is also used in the calculation of federal universal service support according to Mr. Petrouske (Ex. 3, 4-5). LRTC's cost study data was not available in March 2001 and did not become available until May (See Petrouske affidavit attached to Response) and it was not until May 11, 2001 that LRTC learned of the drastic measures being proposed by the Staff and AT&T. June 12, 2001 was its <u>first</u> opportunity to present this evidence in rebuttal.

The results of the cost study demonstrated an IUSF support need for LRTC, based <u>solely</u> on supported services, in the amount of $375,827[14] and also that LRTC's intrastate access revenues for the year 2000 were $209,416 over its access costs. Contrary to the hearing examiner's ruling, the evidence offered by LRTC as an alternative to the Staff

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[14] In Joint Movants' own handwriting, they agreed to allow the testimony referring to the $375,827 funding need into evidence. L.R. Ex. 3 <u>Redacted</u> @2, lines 10-11. They only objected to the explanation. See waiver argument below.

proposal and AT&T's proposal was highly relevant to the issues raised in this case and directly in response to the Staff and AT&T methods seeking to disqualify LRTC from any universal service support.

LRTC filed a response to the Joint Motion arguing that the economic cost testimony of Petrouske is in <u>rebuttal</u> to the Staff's proposal to deny LRTC IUSF support and AT&T's testimony presented on May 31, 2001. LRTC's cost study specifically identifies LRTC's <u>actual</u> costs of supported services and it eliminates subsidies on vertical services raised by Mr. Koch (Staff Ex. 2 @214-15) and was in response to the requirements of 220 ILCS 5/13-301(d), which directs the Commission to identify all implicit subsidies contained in rates or charges of incumbent local exchange carriers, including all subsidies in intraexchange access charges.

During the hearing held on June 19, 2001, Joint Movants at first argued that their motion to strike went to the "totality" of Mr. Petrouske's testimony in LRTC Ex. 3 (R.95). LRTC argued that the motion was overly broad because Mr. Petrouske's testimony addressed issues other than the embedded cost study issue in rebuttal (R.97).

The hearing examiner ruled that insofar as the motion goes to the cost studies, that will be stricken (R.101) even though the testimony was not yet offered or introduced. The hearing examiner misunderstood the significance of Petrouske's cost study testimony in view of 47 USC §254(f) and the FCC's Decision. He stated:

> I don't believe there's any prejudice to the companies that filed this testimony. It think that in the event they find themselves in some sort of cash shortfall situation, there are a number of avenues available to them to address those cash

> shortfalls with the Commission, so I do think it is inappropriate rebuttal. I think it's new information that the parties have had no opportunity to review (R.103).

Joint Movants indicated they had no objection to anything after line 5 page 12 of L.R. Ex. 3 (T.264-265). The hearing examiner then modified his ruling accordingly (T.265).

Subsequently, the hearing examiner directed that a marked up copy of L.R. Ex. 3 be furnished to him showing the portions of testimony being stricken (R.361-362). During the hearing, LRTC offered L.R. Ex. 3 into evidence and Joint Movants indicated they objected to only portions of the first 11 pages and the first few lines on page 12 (T.302-303). In response to the hearing examiner's request, the Joint Movants modified L.R. Ex. 3 in the form of L.R. Ex. 3 <u>Redacted</u>, which marked, in red ink, the <u>portions</u> of the first 11 pages and the first 4 lines of page 12 sought to be stricken. L.R. Ex. 3 <u>Redacted</u> was initialed by Verizon on behalf of all of the Joint Movants (750-751). Joint Movants did not object to anything appearing after line 4 on page 12, and LRTC renewed its offer of proof based on these modifications and the offer of proof was denied (T.751-752). The non-redacted portion of L.R. Ex. 3 <u>Redacted</u> was admitted into evidence on June 22, 2001 (T.751).

The hearing examiner later explained his reasons for granting the motion were two-fold: (1) the evidence did not go to rebut anything on direct; and (2) it involved a new cost study with no meaningful discovery or filing date afterwards (T.534).

B. Violation of Due Process, Equal Protection and Statutory Rights

As explained earlier, the FCC's Decision and §254(f) require the use of historic costs consistent with the FCC's rules to determine IUSF. The FCC's decision wasn't disclosed until May 23, 2001 so no prejudice would have occurred to the Joint Movants in presenting the most accurate information on LRTC's costs in the form of it federal cost study data. It was a denial of LRTC's due process rights and equal protection rights under the Illinois Constitution and U.S. Constitution to deny it an opportunity to be heard and present the most current evidence in opposition to the Staff and AT&T's proposals (1970 Ill.Const. Art. 1, Sec. 2; U.S. Const. Amend. 14). The Administrative Procedures Act, 5 ILCS 100/10-25, states that in a contested case:

> An opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence and argument. (Emphasis added.)

Staff and AT&T submitted testimony to disqualify LRTC from universal service support and LRTC has a right to present evidence to demonstrate that it qualifies for universal service under a method consistent with the FCC's rules.

Nowhere in the schedule was time set for any rural carrier to present evidence in response to the Staff and Intervenors before the June 12, 2001 deadline. No discovery cutoff was ordered. The hearing examiner failed to comply with the minimum requirements of the Administrative Procedure Act and LRTC's constitutional rights by refusing to give LRTC an opportunity to be heard in response to the claims of the Staff and AT&T and to present its own proposal. *E.g., People ex rel. Ill.C.C. v. Operator*

Communication, Inc., 281 Ill.App.^{3d} 297, 217 Ill.Dec. 161 (1996).[15]

Joint Movants suggest that LRTC enjoyed the benefits of an association with IITA and somehow surrendered its right to present cost study evidence of its own. However, IITA does not represent LRTC in this proceeding and LRTC is not bound by IITA's agreements. (*Peru v. Illinois Power*, 258 Ill.App.^{3d} 309 (1994).

LRTC filed a petition to intervene, more than a month in advance of the testimony of May 11, 2001, by Staff and AT&T and more than 2 months prior to a ruling on its petition to intervene. LRTC was not a party until June 19, 2001. The delay in ruling on LRTC's petition prejudiced LRTC from fully participating in the proceeding to protect its own rights. As a non-party, LRTC had no standing to seek to alter the schedule, yet, Joint Movants complain that LRTC did not seek to amend the schedule. LRTC has not delayed this proceeding and does not seek to delay the expedited nature of this proceeding, but does stand on its constitutional and statutory rights to present evidence to prove its eligibility for universal service support. The hearing examiner could have accomplished both goals.

C. Joint Movants Have Waived Their Objection to L.R. Ex. 3

Verizon elicited testimony from the Staff that a cost study for proxy must be required of each company (T.867). Without admitting this cost study evidence, LRTC will have to rely on ROR as the basis for qualifying for IUSF (See Argument IA supra).

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15 The hearing officer erroneously rejected the reasoning of the Operator Communication case R.396-397.

Highly prejudicial to LRTC was the ruling admitting only part of the cost study. The first 11 pages of Petrouske's testimony explained the cost study methodology in detail. (Joint Movants did not object to any part of L.R. Ex. 3 after page 12 (R.302-303).) The cost study results as explained by Mr. Petrouske show a universal service need for LRTC for supported services in the amount of $375,827. Joint Movants waived their objection to the cost study testimony because, in their own handwriting, they let stand the cost study support need of $375,827, which testimony was admitted. L.R. Ex. 3 <u>Redacted</u> @2, lines 10-11. All of the rest of the testimony explaining the study was stricken (R.302-303).

In other testimony in LRTC Ex. 3 <u>Redacted</u> that was admitted, Mr. Petrouske testified that the year 2000 cost study resulted in intrastate switched access revenues of $209,416 (L.R. Ex. 3 @20). Mr. Petrouske continued his discussion of the cost study on page 21 and he explained the access subsidy shown on page 3 of Schedule 3.01. The need testimony of $375,827 and the implicit subsidy testimony were both a <u>direct</u> result of the cost study. It is fundamentally unfair to LRTC to admit the explanation of the access revenue subsidies from the cost study but not admit evidence on the calculation of universal service need from the <u>same</u> cost study. LRTC was denied due process by this ruling and Joint Movants waived their objection.

By agreeing to the admission of portions of LRTC Ex. 3, which relate to the cost study, Joint Movants waived any objection to that <u>entire</u> subject matter and all of L.R. Ex. 3 should have been admitted. See, *Abbott Laboratories, Inc. v. Ill.C.C.*, 289

Ill.App.3d 705, 224 Ill.Dec. 779 (1997). If only a portion of an exhibit is objectionable, the objection must be directed specifically to that part. *Gamble-Robinson Commn. Co. v. Union PAC Ry.*, 262 Ill.400, 104 N.E. 666 (1914). Here, the Joint Movants failed to direct their objections to all the cost study evidence and have thus acquiesced in <u>all</u> the cost study evidence.

Objections to evidence should be made as soon as the grounds for objection become apparent. *Goldberg v. Capitol Freightlines*, 282 Ill. 283, 47 N.E.2d 67 (1943). Once the grounds of the objection become apparent and available, the motion to strike must be timely. *Krengiel v. Lissner Corp.*, 250 Ill.App.3d 288, 621 N.E.2d 91 (1993). A motion to strike made either at the close of the witness's testimony, at the close of the party's case, or at the close of the opponent's opportunity to present his case in chief, is not made in apt time. *Holden v. Caselton*, 275 Ill.App.3d 950, 657, N.E.2d 680 (1995).

The motion to strike was directed to witnesses Petrouske, Whitcher, and Kraut (See Motion to Strike, Appendix A). It was <u>not</u> directed to William Flesch of Gridley Telephone Company, who testified in Gridley Ex. 4.0 @12, to Gridley's economic cost study and the study results showing an eligible amount of $624,430. The testimony of Mr. Flesch was admitted without objection (T.309). A party cannot complain when evidence similar to that objected to is admitted without objection. *Gillespie v. Chrysler Motors Corp.* 135 Ill.2d 363, 553 N.E.2d 291 (1990). Thus, Joint Movants also have waived any objection to LRTC's cost study testimony by failing to object to Gridley's cost study. It was a denial of due process and equal protection to LRTC to deny LRTC the opportunity to present the cost study evidence (1970 Ill.Const. Art. I, Sec. 2; U.S. Const. Amend. 14).

D. The Hearing Examiner Abused His Discretion in Granting the Motion to Strike

The hearing examiner's attempts to abide by the earlier schedule, while laudable, deprive LRTC of the most basic constitutional rights. The Joint Movants attempt to divert attention from the real issue. It is not the schedule as discussed on January 18, 2001, or the schedule agreed to by other parties on March 22, 2001. The issue is not whether LRTC was bound by the actions of the IITA, which, as a matter of law, it clearly was not *Peru v. Illinois Power*, 258 Ill.App.3d 309 (1994).[16] Instead, the key date and main focus is on the content of and impact of the Staff's proposal and AT&T's proposal, which were not disclosed until May 11, 2001.

The adopted schedule did not give affected parties, such as LRTC, an opportunity to present evidence in opposition to the Staff or AT&T any earlier than June 12, 2001. It was foreseeable that attempts to deny support to some carriers would bring forth zealous opposition from those potentially affected carriers. Joint Movants' claim that a preliminary schedule was discussed as early as January 18, 2001. On that date Staff indicated that it believed cost studies of some type were required (T.49). Verizon and Ameritech indicated that company-specific, forward-looking cost studies should be required (T.50-51), yet they didn't allow for company cost testimony in the schedule

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16 Contrary to Joint Movants' assumption, IITA stated early on that not all rural carriers are IITA members (IITA Ex. 2 @ 4).

when they contemplated as much. If anything, Joint Movants, by their comments and actions, agreed to the filing of cost study testimony on June 12, 2001, and they agreed to 1 week to prepare for cross examination on this type of rebuttal cost testimony offered by LRTC. It makes no difference that LRTC's cost testimony was not forward-looking since historic cost is what federal law requires.

The ruling by the hearing examiner was an abuse of discretion and was arbitrary and unreasonable. The ruling failed to balance LRTC's constitutional rights with a reasonable opportunity for Joint Movants to cross-examine Mr. Petrouske. Even though the hearing examiner has wide latitude in admitting evidence and setting schedules, it was clearly reversible error to deny LRTC its constitutional right to be heard and present evidence in response to the extreme and unwarranted proposals by the Staff and AT&T to deny LRTC its ROR and universal service support. 83 Ill.Adm.Code 200.200(e) states that except for good cause shown, an intervenor shall accept the status of the record as the same exists at the time of the beginning of that person's intervention. The schedule prepared on March 22, 2001, did not provide any opportunity for LRTC to respond to Staff's May 11, 2001, proposal or the proposal of AT&T before June 12, 2001. Ameritech was allowed to vary from the schedule and received a week extension from May 4 to May 11, 2001 to file its testimony and all other parties (Verizon, AT&T, MCI and Staff) took until May 11, 2001 to file as well. The IITA was granted permission to file its rebuttal testimony on June 15, 2001, three (3) days later than the scheduled June 12, 2001, date. Yet LRTC was given no opportunity to present its cost study evidence in response to the Staff's proposal and AT&T's proposal even though Joint Movants had L.R. Ex. 3 to review one week before the hearing. Good cause was shown by LRTC and all of L.R. Ex. 3 should have been admitted.

Joint Movants alleged that they had no "ability" to respond to L.R. Ex. 3. Curiously, the Joint Movants did not allege that they were unprepared to cross-examine Petrouske on the cost study, the hearing examiner simply assumed that to be the case. Joint Movants could have responded with their own evidence at the hearing or shortly thereafter. LRTC offered to make Petrouske available later to cross-examine him (T.98). It is inconceivable to imagine that companies as large as AT&T, Verizon, Ameritech or MCI do not have cost study experts to aid them to prepare to cross examine Petrouske. All of these companies have "in house" witnesses who have testified many times before other state agencies.

LRTC's cost study testimony is based upon information developed from the FCC's well-known rules for developing federal universal service support. Joint Movants never stated how much time they would need to prepare to cross-examine Petrouske. They could have completed that task in short order, but instead they relied upon a "technical" scheduling argument to try to deprive LRTC of IUSF support. On June 22, 2001, the case was not closed but was "continued generally" (T.926). It was an abuse of discretion to deny LRTC the right to present its evidence in LRTC Ex. 3 and not require Joint Movants to cross-examine Petrouske or present opposing evidence especially when the record was left open.

IV. HAI IS "PIE IN THE SKY"

A. The Misapplication of HAI

1. Staff's Proposals Are Bad Policy

a. The First Proposal

As set forth in Argument I, state and federal law prohibits the use of HAI to determine IUSF support. Assuming that argument is rejected, LRTC makes the following response.

Staff originally proposed using the ROR as the basis to qualify carriers for IUSF support but misapplied HAI to reduce ROR for those carriers whose HAI results (based on Staff's input changes) were below that company's ROR results (Staff Ex. 1, @16-17, Staff Ex. 11 @2-4). Staff used HAI only in a downward manner to reduce all ROR (T.810). This reduction would be phased in over 5 years. 4 carriers, including LRTC, had staff adjusted HAI results below their ROR (Staff Ex. 1, Attach 1). The 5-year effect of Staff's proposal would be to reduce LRTC's ROR by nearly $264,000.

Staff, admits that HAI may <u>not</u> be the most appropriate means within which to develop economic costs of rural carriers, but staff was not aware of another model that would produce, "more appropriate results" (Staff Ex. 2 @7). The only standard to determine the "appropriateness" was to compare it to ROR (T.693-694). Mr. Koch indicated that HAI results could only be classified as reasonable if the HAI results were within 5% of the ROR on a consistent basis (T.688-689). Staff performs this "sanity check" by comparing the HAI results to the carriers' actual ROR (Staff Ex. 2 @17).

ROR, then, becomes the benchmark by which HAI results are validated. (T.689-690). IITA discusses in detail the many deficiencies of HAI (IITA Ex. 2 @19-21) and Staff concurs in these criticisms (Staff Ex. 2 @16-17) but it was this disparity between HAI and ROR that Staff found as the major flaw in the HAI.(Staff Ex 2@17). Mr. Koch admitted that he expected HAI results to be reasonably close to ROR results (Staff Ex. 2 @17) but they weren't close. Therefore, HAI doesn't pass the Staff's own reasonableness test. Therefore, ROR is a "sane" way to determine a carrier's IUSF support.

HAI costs are useless because the HAI results generated by both IITA (IITA Ex. 2, Attach. 5 Revised) and Staff (Staff Ex. 11.0, Attach. 1 Revised) yield results for most carriers way beyond ROR. Staff inputs reflect a $45 million fund total. Staff was adamant that allowing support to a carrier based on HAI results that exceeded the ROR would be extremely unfair to rate payers (T.811). These unrealistic HAI results then cannot be relied upon to provide universal service support, nor can they be relied upon to eliminate a carrier, such as `LRTC, from receiving support. Staff maintained that a downward adjustment of the ROR based upon HAI was not unfair to LRTC (T.811-812) even though it denies LRTC a reasonable ROR. Staff had the audacity to dclare that its use of HAI "doesn't unduly impact" small carriers. (Staff Ex. 1@12).

b. The Second Proposal

On May, 31, 2001, Staff accepted several input changes from AT&T that resulted in 3 more carriers having HAI results that fell below ROR (Staff Ex.12 @8). Under cross-examination, Mr. Hoagg testified that Staff would accept ROR as a basis for support only if the carrier adequately demonstrated 3 things to the staff.

(1) That the carrier was not inefficient. Efficiency means the lowest cost under the circumstances and avoiding a "gold-plated network," *i.e.*, network capabilities that have costs associated that were unnecessary for the provision of services in question (T.806). A carrier would be inefficient or wasteful if it expended money on a Leer jet and therefore shouldn't be allowed to receive universal service support (T.806-807). No evidence in this record indicates that any carrier is inefficient.

(2) The carrier must not build a gold-plated network, *i.e.*, a network with expensive services for rural areas (T.806); and

(3) The carrier must prove that it exhausted all other income alternatives (T.812-813). This includes access charges below cost (T.873-874).

Without notice, Staff placed the burden of proof on the 7 carriers to refute all these presumptions in this proceeding (T.813-814). Later, Mr. Hoagg added that a carrier should not qualify for universal service support simply by showing that it's ROR is too low (T.866). A cost study or proxy must also be produced (T.867).

Staff agrees there is no evidence in the record to indicate that any carrier is operating inefficiently, building a gold-plated network, or has not exhausted all other income alternatives before seeking IUSF support (T.812-813). The only basis upon which the Staff proposes to reduce a carrier's support is the HAI results (T.816). There is no other indicator (T.817).

Hoagg surmised that if a carrier's HAI results were low, then he was "pretty confident" that it was telling him, not in absolute terms, that there is something wrong with the company's operation. It is the Commission's role to determine what is appropriate for inclusion in a carrier's rate base and what should be excluded from that rate base (T.807) and the Staffs role to investigate. Staff intends to do that next year (T.827). Instead of investigating the 7 carries now to determine what, if anything, is "wrong" about the carrier's expenses, Staff uses HAI results as an indictment, without any proof whatsoever that there is anything inappropriate in the carrier's rate base even though HAI can have a downward bias (T.710). Staff then adopted a reverse burden of proof that was disclosed for the first time on June 22, 2001. This burden of proof is unconstitutional and contrary to the Public Utilities Act and Administrative Procedure Act and also contravenes the hearing examiner's schedule in this case.

The Staff's second proposal would allow all rural carriers to receive support on the basis of an 11.21% ROR <u>except</u> for 7 carriers whose HAI results are below the ROR. Denying support and thus denying ROR to these 7 carriers denies these carriers equal protection under the Illinois and United State Constitutions. The fundamental purpose of providing a particular ROR is to establish just and reasonable rates which will enable the utility to continue operation at an acceptable level of income. *Cerro Copper Products v. Ill.Comm.Comm.*, 83 Ill.2d 364, 415 N.E.2d 345 (1980). Staff would deprive LRTC and 6 other carriers of their ROR without any substantial evidence of wastefulness or extravagance and without properly investigating to determine if there is any basis upon which to deny an expenditure in the rate base. This is contrary to the Staff's duty to investigate *CURED v. Ill.Comm.Comm.*, 285 Ill.App.^{3d} 82, 673 N.E.^{2d} 1159 (1996). Furthermore, this proposal unlawfully confiscates LRTC's property without due process and denies it equal protection in violation of Article I, Section 2 of the Illinois Constitution and the 14th Amendment to the United States Constitution. See *Sprague v. Biggs*, 390 Ill. 537, 62 N.E.^{2d} 420 (1945).

220 ILCS 5/13-504 allows rural LECs with under 35,000 access lines to file rates and charges which shall become effective upon 30 days notice. The rural LECs' tariff filing is, by law, presumptively correct because the proposed charges shall not be subject to suspension. The Commission is not allowed to investigate those rates unless a telecommunications carrier that is a customer or 10% of the access line subscribers file a petition for an investigation. Without that complaint, the rates are by law deemed just and reasonable.

IITA Ex. 4, Attach. 7 shows the prejudice to 7 companies from the Staff's proposed use of HAI. In order to receive its ROR and IUSF, Staff places the burden of proof on the carrier to come disprove an unlawful presumption of inefficiency or wastefulness, excessiveness, and failure to exhaust other income alternatives to qualify for universal service support. On no other occasion has the HAI ever been used in a similar way to the way Staff proposes to use it in this case (T.855). In fact, Staff is misusing the HAI model that it admits is flawed and unreliable for purposes of determining carrier's costs.

Staff's reverse burden of proof, furthermore, violates the Administrative

Procedures Act (5 ILCS 100/10-25), especially under the constraints of the schedule strictly adhered to by the hearing examiner. The 7 carriers have been given no opportunity under the schedule to disprove the Staff's presumptions after notice. While rural carriers may have received notice of this proceeding initially, they have not received notice of the Staff's reverse burden of proof any sooner than the last day of the hearings, *i.e.*, June 22, 2001. Under the Administrative Procedures Act, 5 ILCS 100/10-25, all parties are afforded an opportunity for a hearing after reasonable notice. Thus a blatant violation of the Act will occur if the Staff's second proposal is adopted.

If LRTC is denied IUSF, it has no alternative source of revenue (L.R. Ex. 3 @20) and will have to raise its local rate that is already above the Staff's proposed affordable price. If LRTC raises its rates over the next five years to the same extent its IUSF support is reduced as proposed by the Staff, with all other things being equal, LRTC's local rates will soar to $65.24 per month (T.854-855) . That figure does not include the Additional Charges (T.855). Mr. Hoagg did not recommend raising LRTC's rates to $65.24 over five years and he stated that is a result that he would want the Commission to avoid (T.863-864) but that is <u>the</u> result of the Staff's proposal. Mr. Hoagg described the implementation of HAI reductions when ROR goes up and down in future years (T.842-850).

c. <u>The Third Proposal</u>

Staff was unclear about the application of its proposal in future years and again modified its position. Mr. Hoagg later testified that he had given the second proposal "additional thought" and HAI should be used to adjust ROR only at the end of the first year of the fund (T.857-858). Nevertheless, Staff Ex., 12, Revised, Sch 1 reflects ineligibility for support for LRTC (T.684) and Staff Ex. 11 Revised Attach 1 shows a first year reduction (T.785-796). He suggested that companies come in at that time for an "informal review" in one year to disprove the three presumptions. If the carrier makes an acceptable showing to the Staff, at an informal meeting, there would be no reductions due to HAI (T.887). This nebulous informal review process sets forth no objective standard of what is "acceptable" to the Staff and is also flawed for the same reasons outlined under the second proposal.

2. AT&T's Proposal Is Unlawful

a. Average HAI Cost Support Method Violates §254(f)

It should be noted that AT&T Ex. 3 and Ex. 5.0 are not admitted into the record and that the failure to have them admitted at this time, amounts to a waiver of that evidence (T.535). The parties to this brief object to AT&T Exs. 3 and 5 being admitted at this late date. Without waiving this objection, and in the event that they are later admitted,[17] the parties make the following response.

AT&T proposes using average HAI costs as a basis for universal service support. (AT&T Ex. 3 @9-10; AT&T Ex. 4 @5). It is this average HAI line costs that AT&T proposes to use as a proxy (AT&T Ex. 3 @12). AT&T presents several different models

[17] A motion to strike parts of AT&T's Ex. 5 (T.526-535) was granted (T.875) and the parties hereto do not waive that ruling.

based upon the Staff's input recommendations and AT&T's input recommendations for the average HAI costs. This approach is a transparent attempt to distort HAI costs by averaging costs to reduce needed IUSF support to rural carriers. There is no way this proposal passes muster with §254(f). It is preempted.

In an apt and well-reasoned response, the Staff rejects AT&T's proposed average HAI support methodology for two sound reasons. First, averaging the costs, by definition yields an underestimate for some companies and an overestimate for others. This introduced greater inaccuracy from estimations twice removed (Staff Ex. 11 @5). AT&T's recommendation introduces greater inaccuracy in what is already a flawed model. Second, average costs would render forward-looking costs irrelevant because differences in company amounts would not be a function of HAI cost estimates but rather a function of different access line counts and the affordable price. Staff rejected this approach (Staff Ex. 11 @6), which was a recognition by Staff that HAI does not do a particularly good job at identifying company cost differences. Average costs may define the group well, but it does not represent the cost of each individual company well at all (IITA Ex. 4 @29). The Commission must reject AT&T's proposed average HAI methodology.

b. AT&T's Access Subsidy Test Violates §254(f)

Next, AT&T proposes using average HAI access costs and comparing that to actual per company revenues to determine whether or not an implicit subsidy exists under the statute (AT&T Ex. 3.3). AT&T suggests that it is impossible to determine actual levels of implicit subsidies. That is, of course, the case with average schedule companies. Default inputs are then used by AT&T to determine average access costs (AT&T Ex. 3 @13, 15). AT&T then makes the radical recommendation that any carrier whose excess revenues in year 2000 exceeded its average HAI access costs would be ineligible for any universal service support when IUSF is established. (AT&T Ex. 3 @14). This recommendation is absurd, contrary to federal law and universal service goals and procedures in 47 USC §254(f).[18]

AT&T's proposal is patently unreasonable. For example, a carrier that has $1 in intrastate access revenues more than its costs would lose potentially several hundreds of thousands of dollars if not tens of thousands of dollars in needed support. It would completely defeat the purpose of intrastate jurisdiction universal service and run contrary to the Commission's policy in the Fourth Interim Order of 83-0142, in which carriers are supposed to mirror interstate access rates in the intrastate jurisdiction.

Under the present mirroring policy, a carrier cannot accurately predict from one year to the next exactly what its access revenues or costs will be, so there is no way to control or avoid a subsidy or deficit. Therefore, AT&T's recommendation fails to be a predictable or sufficient mechanism under §254(f).

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18 Amazingly, AT&T recommended a funding methodology for payment of universal service based upon retail revenues and as support for that position argued that it was consistent with FCC federal universal service methods (AT&T Ex.3 @ 17). If consistency with the FCC methodology is a valid goal as AT&T so indicates, then historic costs should be the proper method for qualifying for universal service (Argument I) and LRTC should have been allowed to introduce its cost study methodology, which is consistent with federal universal support eligibility for rural carriers (See Argument III supra).

The Commission lacks the statutory authority to deny universal service support on the basis of access revenues exceeding average HAI access costs. *E.g., GTE MTO v. Ill.Comm.Comm.*, 166 Ill.App.3d 916, 521 N.E.2d 584 (1988). AT&T is seeking retroactive ratemaking. The Act prohibits retroactive ratemaking i.e., it prohibits refunds when rates are too high and surcharges when rates are too low. *Independent Voters v. Ill Comm. Comm.*, 117 Ill.2d 90, 510 N.E.2d 850 (1987). This principle is especially true under 220 ILCS 5/13-540. There is nothing in 13-301(d) that can be interpreted to deny support to a carrier based on access subsidies when the carrier otherwise demonstrates a need. 13-301(d) simply requires that the Commission identify implicit subsidies and, if possible, make them explicit in establishing a universal service fund. This will require access reform.

The issue of access rates should be addressed in a separate docket. The FCC is currently reviewing access charges and evaluating proposals for access charge reform. Until then, IITA has reasonably addressed the subsidy issue (IITA Ex. 2 @54-55). In the meantime, no carrier should be denied universal service support in the future for following the Illinois Commerce Commission's past mirroring policy in 83-0142. To do so would be a fundamental denial of due process and contrary to the requirement in §254(f) that a state may adopt regulations that preserve and advance universal service without being inconsistent with the FCC's rules.

B. LRTC Qualified Under the HAI Approach

Assuming, arguendo, that HAI is a proper method of determining support, then

LRTC presented sufficient evident to show it passed the HAI test. IITA made 12 categories of input changes (Staff Ex. 2 @18) and all but 4 were rejected by Staff (Staff Ex. 2 @22). The reason Mr. Koch gave for rejecting IITA's input changes was that felt that IITA did not explain or support the proposed changes over HAI default values (Staff Ex. 2 @19). Mr. Koch presumed that the HAI defaults contained the best data. As IITA pointed out, the entire discussion of input changes highlights the questionability validity of the HAI and the difficulty in utilizing it (IITA Ex. 4 @6).

LRTC submitted company specific HAI input changes (L.R. Ex. 1). LRTC proposed 9 changes on L.R. Ex. 1, Sch. 1.05. 8 of these inputs changes involved the same inputs changes suggested by IITA but with LRTC information. These changes included buried vs. aerial plant, distribution and feeder cable, switching expense, cost of capital, corporate overhead factor, billing/bill inquiry expense, and carrier-to-carrier customer service billing expense. Based on these adjustments, and the adjustments made by IITA, LRTC reflected a universal service need of $509,147 (L.R. Ex. 1 @11).

The Staff did not respond to LRTC's input adjustment changes until May 31, 2001, when Mr. Koch summarily rejected all of LRTC's input changes (Staff Ex. 12 @5-6). Mr. Koch claimed that certain input changes in the aerial vs. buried plant were not consistent with the numbers disclosed by IITA in a data request and due to that inconsistency he recommended the Commission reject this LRTC input change (Staff Ex. 12 @3-4). Mr. Koch further rejected input changes 4 through 9 because they reflected "embedded" costs of LRTC. He claimed that the default values were more appropriate

(Staff Ex. 12 @4).

Mr. Petrouske directly addressed all of Koch's concerns on the input changes in L.R. Ex. 3 @12-18, but Mr. Koch, appeared to have a preordained mission and unrealistically rejected all of these changes. (T.695). LRTC provided data on its buried plant that Staff rejected because it was inconsistent with data supplied by IITA from LRTC's annual report. Mr. Petrouske explained that the HAI input called for more data than just a line item on the annual report and that LRTC's proposed input reflected the actual makeup of the company's plant. Under cross-examination, Mr. Koch testified that it appeared "fairly persuasive to me that he [Petrouske] did explain adequately why there might have been a discrepancy …" (T.697). Nevertheless, this change was not accepted by Staff but it should have been because a persuasive explanation of the discrepancy was made.

Mr. Petrouske was the VP and General Manager of an Illinois billing company, Gensoft Systems, and had several years experience with rural carriers billing costs. He explained that the HAI default for customer billing expense and carrier billing expenses was unrealistic and did not even cover the expenses of what it would take for a billing company like Gensoft to issue bills. HAI has a default of $1.22 per line cost and it would take a rural carrier that did not have the economies of scale more than $3.00 per bill to cover expenses (L.R. Ex 3 Redacted @ 15-17). Despite this explanation, Koch still rejected this change (T.698) but it would not surprise Koch if the actual costs of the small companies on a per-line basis for access billing would be higher than for a large Bell operating company which is what the default was based on (T.765-766). Mr. Petrouske also adequately explained that the default for corporate operations expense and central office investment expense did not cover the realistic expenses of LRTC because it has only 530 lines and does not enjoy the economies of scale. Mr. Koch provided no evidence to refute these changes.

Staff accepted the HAI default for central office switching and central office transmission expense factors (T.764-765) as the "best" input instead of the results based on 19 Illinois rural companies (IITA Ex. 4 @7-9) even though the default relied on a 1993 incremental cost study of the New England Telephone Company in New Hampshire (T.760-767) .

Using LRTC's input adjustments, except for the cost of capital, and Staffs other adjustments including the 3 adjustments from AT&T, LRTC reflected an HAI support need of $246,359. Using the same formula without AT&T's adjustments, LRTC has an support need of $397,005. LRTC passed the HAI test and it was unreasonable to reject these input changes.

Staff erroneously accepted three of AT&T's proposed input changes (Staff Ex. 12 @6-8). These modifications resulted in the disqualification of 3 more carriers under the Staff's proposal (Staff Ex. 12 @8, 10) and reduced LRTC's HAI results. Staff's input changes are unreasonable and not based on substantial evidence.

Dr. Clarke's inputs lack any credibility due to blatant misrepresentation to this Commission. One of AT&T's input changes was based upon HAI 5.2. Dr. Clarke testified that HAI's "most recent version" was 5.1 or 5.2 (AT&T Ex. 4 @4). Later he referred to versions 5.1 and 5.2 as the "more current releases" (AT&T Ex. 4 @5). Clarke reasoned that 5.1 or 5.2 were more appropriate because 5.0a is over 3 years old and improvements have been made in 5.1 and 5.2 in collaboration with the FCC, which adopted the improved versions of HAI for switching and interoffice expense (AT&T Ex. 4 @5-6).

Koch agreed that in selecting inputs, the goal should be to come up with inputs that best predict future-looking costs (T.754). Mr. Koch was unaware of AT&T admissions that more recent models were not available (T.728-729). L.R. Koch Cross Ex. 1 was admitted into evidence (T.876). In that exhibit, AT&T was asked to provide HAI version 5.2 and Dr. Clarke responded:

> Please note that because the <u>HAI 5.2 model has never been prepared for national distribution, the editing of these documents may not be as complete or accurate as</u> the editing of the <u>HAI 5.0a</u> documents. (Emphasis added).

Later in the same document, Dr. Clarke responded:

> <u>AT&T does not have</u> the required data nor <u>a version</u> of either the HAI 5.1 or 5.2 model <u>that is operational for Illinois.</u> (Emphasis added).

In other words Dr. Clark had the audacity to testify that the Commission should be using the newly released HAI 5.2 when it wasn't released or complete! After reviewing Koch Cross Ex. 1 and AT&T's admissions, and keeping in mind that the goal is the best input, Koch <u>still</u> accepted AT&T's response for input values that were not available for national distribution, not complete or accurate as HAI 5.0a, and not available in Illinois.

Koch found the HAI 5.2 information “satisfactory” (T.778). It is unrealistic and unreasonable to base changes on models that don’t exist and that are not complete or accurate. Staff’s acceptance of this AT&T input change should be denied by the Commission.

In another change, AT&T argued for a greater amount of aerial plant because it is cheaper to install than buried plant. Dr Clarke testified that he was “vaguely” aware of a Commission rule requiring 80% of the plant to be underground but he thought the rule was unclear because he couldn’t tell if it was measuring percent of investment cost or percent of linear miles (T.179-180). Dr Clarke was wrong again. 83 Admin Code Part 730.300(a) clearly requires that outside plant constructed after 1992 <u>measured in sheath miles</u> must be underground. His proposed change would violate that rule because AT&T’s proposal would place only 50% to 65% of the outside plant underground (T.182-183).

Most rural carriers have buried plant that requires much less maintenance than aerial and over the long run results in a lower cost. Even the HAI model authors explain why aerial plant is not appropriate and can’t be compared to electric lines (IITA Ex. 4, Attach. 2). (IITA Ex. 4, Attach. 2). The total life cost of buried cable is lower than for aerial in Illinois, especially in areas where there is significant hard rock near the surface. Leaf River has hard rock near its surface (L.R. Ex. 2 @2). Staff’s acceptance of this change is unfounded and violates the Commission’s own rule at 83 Ill.Adm.Code Part 730.300(a).

AT&T proposed an input change for structure sharing, which Staff adopted. One would have to assume construction of not only new telephone network, but also a simultaneous rebuilding of electric and cable networks within a similar time frame in order to share buried facilities. This is an unrealistic assumption, especially in a rural community (IITA Ex. 4 @17). In fact, Dr. Clarke admitted that he did not know if it was feasible or realistic for rural telephone carriers to structure share. He simply "assumed" that they could (T.196-197). It was a complete fantasy for Staff to have agreed to this assumption and to have accepted this change. This change must be rejected by the Commission.

AT&T recommends a cost of capital change based upon Ameritech's cost of capital in 96-0486/96-0569 (AT&T Ex. 4 @9-10). This change is unfounded. There are many different business factors faced by small companies that are different from large companies. Furthermore, the Staff's proposed cost of capital (Staff Ex. 5, Sch. 5.1) is nearly identical to the most recent rural company rate case decided by the Commission. (See Yates City Order in 90-0304, October 14, 1993. (T.44-455, 457). Staff was correct in rejecting AT&T's cost of capital input change based on the Ameritech case because there was a better number for the group of small companies (T.756) (Staff Ex. 12 @7).

AT&T recommended reducing the default fiber cost by one-half (AT&T Ex. 4 @8-9) inputting forward-looking switching investments that were to be substantially less than embedded investments and reducing the values for fiber cable investments in feeder and interoffice use (AT&T Ex. 4 @12-13) which changes were accepted by Staff (Staff

Ex. 12 Koch @6-7). By reducing the cost model to reflect current rates of fiber cable to about half the costs that they were when rural companies made the investment years ago, the HAI does not given any consideration to carriers' past investments in providing universal service to customers when the costs of digital switches and fiber was higher than it is today (T.185-186) and which, at that time, improved universal service to rural areas. This input change is out of line because AT&T makes no adjustment for increased cost factors over the last 3 years in other areas such labor increases, insurance increases and fuel increases, etc (T.186-187). It is unclear if HAI even includes CALEA (T.191-192).

HAI does not allow any recovery to phone companies for any stranded costs (T.187). It is arbitrary to deny current support to rural carriers for past investment decisions which provided universal service to rural customers. A rural carrier would have to be clairvoyant to make plant investment decisions to determine when the lowest cost in a product will occur and meanwhile make its rural customers wait until the technology is at its lowest cost. The entire approach of HAI, negates USF by punishing rural carriers for past universal service. Nevertheless, using the proper inputs,. LRTC passes the HAI test and should be awarded universal service support.

V. SUPPORTED SERVICES SHOULD INCLUDE ALL RURAL ACCESS LINES AND DSL.

Ameritech recommended that supported services be limited to the primary line in a residence and a single business line (Ameritech Ex. 2 @5) and Verizon suggested that only a single line be supported by USF, alleging that the state does not have any particular interest in having citizens be able to conduct multiple simultaneous conversations. Verizon is also against multi-line business customers receiving support (Verizon Ex. 5 @9-10). MCI also argued against multiple residential lines and business lines (MCI Ex. 1 @4).

The Staff quite correctly rejected this notion as unenforceable and further it would lead to a perception of unfairness (Staff Ex. 9 @2-3). In fact, aggressive marketing by a carrier to provide multi-owned lines per household would legitimately circumvent any limitation against multi-line residential or business customers. Simply encouraging a spouse or other adult in the household to subscribe to the service, as they would have the right to do, would negate any rule against multi-line residential support.

A much more compelling reason to support all lines is that the FCC has <u>not</u> made any distinction between multi-line residential or business customers. The proposal to restrict rural support is, on its face, contrary to 47 USC §254(f). Limiting the supported lines <u>less</u> to than federal universal service would be <u>inconsistent</u> with the FCC rules and would not preserve and advance universal service. Therefore, the Illinois Commerce Commission is preempted from adopting this proposal. (See, Agreement I B above).

Like its urban brethren, rural customers should be able to enjoy simultaneous use of teen lines or internet dedicated home and business access lines.

The situation in LRTC is a compelling case example for business line support. LRTC has 6 access lines to the local school and 7 access lines to the volunteer department and a single access line for the local post office, all considered business customers (L.R. Ex. 2 @4). Many rural business owners cannot afford independent business locations and often operate out of their own homes. These rural carriers in this case do not have Wal-Mart-type businesses in their service area. Instead, local schools, fire departments, post offices and other valuable public service entities should not be denied universal service support. To do so would be contrary to the health and welfare of Illinois citizens and contrary to the public interest.

On June 28, 2001, Governor Ryan signed H.B. 2900 into law. 220 ILCS 5/13-517 requires all telecommunications carriers to provide advanced telecommunications services to 80% of their customers by January 1, 2005, a little over 3 years away from now. This law makes advanced telecommunications services a goal for all local exchange carriers.

While some of the Intervenors have pointed out that this new law contains a procedure for a carrier to obtain a waiver from the Commission that only occurs when, after notice to all customers and a hearing, the Commission finds that providing advanced telecommunication services would be unduly burdensome, technically infeasible, or otherwise impractical. The legal presumption is that carriers must provide the services until a waiver is granted. Most rural carriers will want to provide DSL for their customers rather than seek a waiver. As such, DSL should be counted as one of the supported services, at least until a carrier obtains a waiver for such a service.

Another provision of the new Act provides for the Digital Divide Elimination Infrastructure Fund to make grants to carriers who have qualified for a waiver under 13-517 to actually build an advanced system 220 ILCS 13-301.3. Therefore, a waiver is a temporary status and the legislature has targeted advanced services as a strong policy goal for all carriers.

The Staff has expressed a concern about rural companies having "gold-plated," very costly networks capable of high-speed data transmission. Mr. Hoagg stated:

> The intent of this proceeding is to determine the required support for the costs associated with providing voice-grade basic services; it would be inappropriate here to require the general body of Illinois rate payers to support deployment of, for example, costly high-speed data networks (Staff Ex. 1 @14).

The legislature has alleviated Staff's concerns and sent a strong, unambiguous message to the Commission to deploy advanced service networks for at least 80% of the customers by 2005. It should be a supported service and the second prong of the Staff's 3 presumptions has now been eliminated.

VI. THE DEM CONTRIBUTORS SHOULD BE REQUIRED TO LOWER THEIR PRESENT RATES WHEN THE DEM FUND EXPIRES

The DEM fund is set to expire September 30, 2001, by order of this Commission. Interexchange carriers presently contribute to the DEM fund and the parties to this proceeding propose that universal service assessments to the customer be reflected in line item billing. The interexchange carriers must be required, then, to reduce their rates to the same extent as their contributions to the DEM fund; otherwise, they would receive a windfall and their customers will be billed twice (Ameritech Ex. 2.1 @13). There is no justification for allowing the interexchange carriers to keep the amount of the DEM contributions. A rate reduction will help offset their customers' monthly universal service payment.

CONCLUSION

WHEREFORE, the parties hereto pray that the Commission enter an order finding a need for an Illinois Universal Service Fund under 220 ILCS 13-301(d); that the Commission find that rural carriers qualify for funding based on historic costs and that HAI is not appropriate for determining eligibility; that the Commission find that the affordable price is the current rate; that the Commission find that the following carriers are eligible for Illinois universal service support in the following amounts:

Leaf River Telephone Company	$375,827
Alhambra Grantfork Telephone Company	$ 5,564
The Crossville Telephone Company	$ 10,318
Glasford Telephone Company	$ 19,824
Montrose Mutual Telephone Company	$305,905
New Windsor Telephone Company	$121,925

Oneida Telephone Exchange	$173,440
Viola Home Telephone Company	$112,484
Woodhull Community Telephone Company	$107,547;

that the Commission find that the support services include the Federal Communications Commission's list of supported services for all rural access lines and digital subscriber line service; that the Illinois Universal Service Fund begin no later than October 1, 2001; and for such other and further relief as is deemed just.

Respectfully submitted,

LEAF RIVER TELEPHONE COMPANY
ALHAMBRA-GRANTFORK TELEPHONE COMPANY
THE CROSSVILLE TELEPHONE COMPANY
GLASFORD TELEPHONE COMPANY
MONTROSE MUTUAL TELEPHONE COMPANY
NEW WINDSOR TELEPHONE COMPANY
ONEIDA TELEPHONE EXCHANGE
VIOLA HOME TELEPHONE COMPANY
WOODHULL COMMUNITY TELEPHONE COMPANY

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<u>Certificate of Service</u>

I hereby certify that copies of the foregoing Brief was served upon the parties on the attached service list by e-mail and/or U. S. mail, on _________________.

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Gary L. Smith